IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-09-2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.27970 of 2007 and
M.P.Nos.1 and 2 of 2007

M/s.Shree Mithai (P) Ltd.,
Rep. by its Managing Partner-Mukesh K.patel,
No.8, Dr.T.V.Road,
Chetpet, Chennai-600 031. .. Petitioner.

Versus

The Commercial Tax Officer,
Egmore II Assessment Circle,
Chennai. .. Respondent.

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the impugned proceedings of the respondent in TNGST No.0540861/2001-02 dated 31.07.2007 and quash the same.

For petitioner : Mr.S.Rajasekar
For respondent : Mr.R.Mahadevan
Additional Government Pleader

O R D E R

Mr.R.Mahadevan, the learned Additional Government Pleader takes notice for the respondent.

2. With the consent of the learned counsels appearing on either side, the writ petition itself is taken up for final disposal.

3. The petitioner, who is engaged in the business of manufacture of Sweets and Savouries, is a registered dealer on the file of the respondent, bearing TNGST No.0540861. For the taxable year 2001-2002, the petitioner has shown a turnover of Rs.5,79,35,498/-, which was accepted by the respondent and tax was levied at 2% under Section 3-D of the Tamil Nadu General Sales Tax Act, 1959 (in Short `the Act'). The petitioner had also paid the tax and vide proceedings in TNGST/0540861/2001-02, dated 18.08.2003, the assessment was completed.

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4. While that being so, during March 2007, under the guise of revising the assessment, under Section 7-A of the Act, the respondent had issued a revision notice, dated 30.03.2007, stating that no details were filed for the purchases of turnover of Rs.1,24,02,557/- and purchases of pulses and oil for a turn over of Rs.27,39,180/- for the assessment year 2001-2002 and adding a gross profit of 30% towards the said purchases of turnover and purchases of pulses and oil, levied tax at 12% and 4% thereon. The said notice was challenged by the petitioner in W.P.No.14143 of 2007, wherein it was held that it was open to the petitioner to submit their objections, within 15 days from the date of receipt of the said order, with a consequential direction to the respondent to pass orders thereon, within four weeks from the date of receipt of the objections from the petitioner. Pursuant to the above direction, the petitioner has approached the respondent by a representation, dated 12.07.2007, stating his objections. Upon considering the same, the respondent had issued the impugned proceedings, dated 31.07.2007. It is that portion of the proceedings, levying tax at 12% in respect of the purchase turn over of Rs.1,24,02,557/-, which is under challenge before this Court.

5. Though the prayer is for a larger relief, the learned counsel appearing on behalf the petitioner has submitted that it would suffice, if the petitioner is given a fresh opportunity of making his representation before the respondent, along with the necessary documents, to substantiate the claims made by the petitioner and to direct the respondent to pass appropriate orders thereon, within a specified period.

6. Considering the limited prayer sought for by the learned counsel appearing on behalf of the petitioner, without going into the merits of the case, the impugned proceedings, dated 31.07.2007, is set aside and the petitioner is directed to submit a representation with regard to his claims, along with the necessary documents, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such a representation, the respondent is directed to pass appropriate orders thereon, on merits and in accordance with law, after giving an opportunity to the petitioner, within a period of two weeks thereafter.

The writ petition is ordered accordingly. No costs. Consequently, connected M.P.Nos.1 and 2 are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Commercial Tax Officer,
Egmore II Assessment Circle,
Chennai.

1 CC To Ms.R.Hemalatha, Advocate, SR NO.54965.
1 CC to the Spl. Government Pleader(Taxes), SR NO.54813.

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CV(CO)
RVL 19.09.2007

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